

## HOUSE BILL NO. 226

INTRODUCED BY MCALPIN

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE NAME OF THE SHERIFF'S DEPARTMENT TO THE SHERIFF'S OFFICE; AND AMENDING SECTIONS 2-15-1781, 7-3-1344, 7-4-2503, 7-4-2508, 7-4-2509, 7-4-2510, 7-4-3001, 7-32-2102, 7-32-2126, 10-4-102, 19-7-612, 19-7-801, 39-3-406, 40-6-402, 44-2-401, 44-5-506, AND 45-8-108, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-15-1781, MCA, is amended to read:

**"2-15-1781. Board of private security patrol officers and investigators.** (1) There is a board of private security patrol officers and investigators.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company, as defined by 37-60-101;

(b) one proprietary security organization, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's ~~department~~ office;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members ~~shall~~ must be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

**Section 2.** Section 7-3-1344, MCA, is amended to read:

**"7-3-1344. Prior rights of law enforcement officers.** (1) A police officer employed by any police department ~~or departments~~ established as required by law in any city or town of the county or a deputy sheriff employed by the county sheriff's ~~department~~ office prior to the election and qualification of a commission under part 12 and this part has the same job tenure rights as though the election and qualification had not taken place.

(2) A police officer who has vested rights in a police retirement fund shall maintain prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part must be continued as a retirement fund for the police department of the municipality, subject, however, to the prior vested rights of a police officer employed by any police department ~~or departments~~ established as required by law in any city or town of the county prior to the election and qualification of a commission under part 12 and this part.

(3) The board of trustees of the police retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of the municipality who must be selected by a majority vote of the members of the police department on the active list of the municipality. The selection must be made between May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms.

(4) Except as provided in this section, the police retirement fund must be continued and administered in the manner prescribed by law for retirement funds established in cities and towns."

**Section 3.** Section 7-4-2503, MCA, is amended to read:

**"7-4-2503. Salary schedule for certain county officers -- county compensation board.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, justice of the peace, and county auditor in all counties where the office is authorized must be established by the county governing body based upon the recommendations of the county compensation board provided for in subsection (4).

(b) The annual salary established pursuant to subsection (1)(a) must be uniform for all county officers

1 referred to in subsection (1)(a).

2 (2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon  
3 subsection (1), the sum of \$400 a year, except that an elected county superintendent of schools who holds a  
4 master of arts degree or a master's degree in education, with an endorsement in school administration, from a  
5 unit of the Montana university system or an equivalent institution may, at the discretion of the county  
6 commissioners, receive, in addition to the salary based upon subsection (1), up to \$2,000 a year.

7 (b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of  
8 \$2,000 a year.

9 (c) The county sheriff must receive a longevity payment amounting to 1% of the salary determined  
10 under subsection (1) for each year of service with the sheriff's ~~department~~ office, but years of service during any  
11 year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any  
12 calculation of longevity increases. The additional salary amount provided for in this subsection may not be  
13 included in the salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as  
14 provided in 7-4-2508.

15 (3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time  
16 official under 7-4-2704, and the salary is \$50,000 a year, subject to adjustment as provided in subsection (3)(c).  
17 In counties with a population less than 30,000, the county attorney who is a part-time official is entitled to receive  
18 an annual base salary equal to the salary received for the fiscal year ending June 30, 2001.

19 (b) In those counties where the office of the county attorney has been established as a full-time position  
20 pursuant to 7-4-2706, the salary of the county attorney is the same as that established for full-time county  
21 attorneys in subsection (3)(a).

22 (c) Each county attorney is entitled to an increase in salary based upon the schedule developed and  
23 approved by the county compensation board as provided in subsection (4).

24 (d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is  
25 entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney.  
26 After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an  
27 additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of  
28 service as deputy county attorney and for each year of additional service up to completion of the 11th year of  
29 service, each deputy county attorney is entitled to an additional annual increase in salary of \$500.

30 (ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included

1 in the calculation of the longevity increase.

2 (4) (a) There is a county compensation board consisting of the county commissioners, three of the  
3 county officials described in subsection (1) appointed by the board of county commissioners, the county attorney,  
4 and two to four resident taxpayers appointed initially by the board of county commissioners to staggered terms  
5 of 3 years, with the initial appointments of one or two taxpayer members for a 2-year term and one or two  
6 taxpayer members for a 3-year term. The county compensation board shall hold hearings annually for the  
7 purpose of reviewing the compensation paid to county officers. The county compensation board may consider  
8 the compensation paid to comparable officials in other Montana counties, other states, state government, federal  
9 government, and private enterprise.

10 (b) The county compensation board shall prepare a compensation schedule for the elected county  
11 officials, including the county attorney, for the succeeding fiscal year. The schedule must take into consideration  
12 county variations, including population, the number of residents living in unincorporated areas, assessed  
13 valuation, motor vehicle registrations, building permits, and other factors considered necessary to reflect the  
14 variations in the workloads and responsibilities of county officials as well as the tax resources of the county.

15 (c) A recommended compensation schedule requires a majority vote of the county compensation board,  
16 and at least two county commissioners must be included in the majority. A recommended compensation  
17 schedule may not reduce the salary of a county officer that was in effect on May 1, 2001.

18 (d) The provisions of this subsection (4) do not apply to a county that has adopted a charter form of  
19 government or to a charter, consolidated city-county government."  
20

21 **Section 4.** Section 7-4-2508, MCA, is amended to read:

22 **"7-4-2508. Compensation of undersheriff and deputy sheriff.** (1) The sheriff shall fix the  
23 compensation of the undersheriff at 95% of the salary of that sheriff.

24 (2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary  
25 of that sheriff according to the following schedule:

26 In counties with population of:

27 Below 15,000	85% to 90%
28 15,000 to 29,999	76% to 90%
29 30,000 to 74,999	74% to 90%
30 75,000 and over	72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (2)(a) according to a rank structure in the ~~department~~ office.

(3) For purposes of this section, the term "compensation" means the base rate of pay and does not mean longevity payments or payments for hours worked overtime."

**Section 5.** Section 7-4-2509, MCA, is amended to read:

**"7-4-2509. Sheriff's ~~department~~ office -- work period in lieu of workweek -- overtime compensation.** (1) (a) A sheriff's ~~department~~ office may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of ~~his~~ the regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners."

**Section 6.** Section 7-4-2510, MCA, is amended to read:

**"7-4-2510. Sheriff's ~~department~~ office -- longevity payments.** Beginning on the date of ~~his~~ the deputy sheriff's or undersheriff's first anniversary of employment with the ~~department~~ office and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the ~~department~~ office, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increases. This payment ~~shall~~ must be made in equal monthly installments."

**Section 7.** Section 7-4-3001, MCA, is amended to read:

**"7-4-3001. Office of sheriff.** The duties and functions of the sheriff's ~~department~~ office are provided for in Title 7, chapter 32, part 21, ~~chapter 32~~."

**Section 8.** Section 7-32-2102, MCA, is amended to read:

**"7-32-2102. Undersheriff to be appointed -- return to other duties.** (1) The sheriff, as soon as possible after ~~he enters upon the duties of his~~ taking office, ~~must~~ shall, except in counties of the seventh class, appoint ~~some person~~ an undersheriff to ~~hold during~~ serve at the pleasure of the sheriff. ~~Such~~ The undersheriff

1 has the same powers and duties as a deputy sheriff.

2 (2) A deputy sheriff appointed undersheriff as provided in subsection (1) ~~must~~ shall resume other duties  
3 within the sheriff's ~~department~~ office, while maintaining his tenure and seniority, if the sheriff appoints another  
4 to succeed ~~him~~ the deputy sheriff as undersheriff. Upon the return to the position of deputy sheriff, ~~such the~~  
5 person ~~shall~~ must be paid the same salary ~~he~~ the person would have received had ~~he~~ the person not taken the  
6 undersheriff position."

7  
8 **Section 9.** Section 7-32-2126, MCA, is amended to read:

9 **"7-32-2126. Liability insurance for privately owned vehicles when used on official business. (1)**

10 The board of county commissioners shall provide liability insurance for not more than one privately owned  
11 vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more  
12 than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business.  
13 The insurance ~~shall~~ must be paid for from county funds and ~~shall~~ must provide full comprehensive and collision  
14 coverage plus minimum coverage of \$100,000 for each person for bodily injury and medical expenses, \$300,000  
15 for all persons per accident, and \$50,000 per accident for property damage.

16 (2) This section ~~shall~~ does not apply to counties furnishing motor vehicles to the sheriff's ~~department~~  
17 office pursuant to the provisions of 7-32-2125."

18  
19 **Section 10.** Section 10-4-102, MCA, is amended to read:

20 **"10-4-102. Department of administration duties and powers. (1)** The department shall assist in the  
21 development of basic and enhanced 9-1-1 systems in the state. The department shall:

22 (a) establish procedures for determining and evaluating requests for variations from basic or enhanced  
23 9-1-1 service;

24 (b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;

25 (c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;

26 (d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with  
27 the plan and use of funding; and

28 (e) as it finds necessary, report to the legislature the progress made in implementing statewide basic  
29 and enhanced 9-1-1 systems.

30 (2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to

1 participate in development and implementation of the 9-1-1 program in the state. The council must be  
2 established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone  
3 companies, the associated public safety communicators, the department of emergency services, police  
4 departments, sheriff's ~~departments~~ offices, local citizens, organizations, and other public safety organizations  
5 may submit recommendations for membership on the advisory council."  
6

7 **Section 11.** Section 19-7-612, MCA, is amended to read:

8 **"19-7-612. Medical examination of disability retiree -- cancellation of benefit.** (1) The board, in its  
9 discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The  
10 examination must be made by a physician or surgeon at the recipient's place of residence or at another place  
11 mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by  
12 reason of physical or mental capacity, whether the recipient can perform the essential elements of the position  
13 held by the recipient when the recipient was retired. If the board determines that the recipient is not  
14 incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a  
15 position under subsection (2) or when, if a position is available, the recipient cannot be reinstated under  
16 subsection (2) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination,  
17 the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination  
18 of the board.

19 (2) (a) Except as provided in subsection (2)(b), a person other than an elected official whose disability  
20 retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position  
21 held by the person immediately before the person's retirement or to a position in a comparable pay and benefit  
22 category within the person's capacity, whichever is first open. The fact that the person was retired for disability  
23 may not prejudice any right to reinstatement to duty that the person may have or claim to have.

24 (b) This section does not affect any requirement that the former employee meet or be able to meet  
25 professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

26 (3) The public body required to reinstate a person under subsection (2) may request a medical or  
27 psychological review as to the ability of the member to return to work as a member of the sheriff's ~~department~~  
28 office. If the board's findings are upheld, the public body shall pay the cost of the review."  
29

30 **Section 12.** Section 19-7-801, MCA, is amended to read:

1           **"19-7-801. Membership in municipal police officers' retirement system prior to or following**  
2           **city-county consolidation -- payment of benefits by two systems.** (1) A law enforcement officer who has not  
3           changed employment but who has, because of a city-county consolidation, been transferred either from a city  
4           police force to a county sheriff's department office or from a county sheriff's department office to a city police  
5           force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service  
6           credit in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum  
7           membership service requirement of the system to which the officer last made contributions. A member who has  
8           elected to continue membership in the public employees' retirement system under 19-7-301 may continue the  
9           election. However, credit for service in the public employees' retirement system that has not been transferred  
10          prior to January 1, 1979, may not be transferred.

11           (2) A member of the municipal police officers' retirement system who begins employment in a position  
12          covered by the sheriffs' retirement system following a city-county consolidation may remain in the municipal  
13          police officers' retirement system or elect to become a member of the sheriffs' retirement system by filing a  
14          written election with the board no later than 30 days after beginning the employment.

15           (3) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are  
16          governed by the provisions of the retirement system to which the officer last made contributions.

17           (4) The service retirement benefit of a member described in subsection (1) must be calculated  
18          separately for each system based on the service credit under each system. The calculation for the sheriffs'  
19          retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an  
20          optional retirement benefit elected under 19-7-1001. The final salary or highest average compensation for each  
21          calculation must be based on the highest compensation earned while a member of either system. Each system  
22          shall pay its proportionate share, based on the number of years of service credit, of the combined benefit.

23           (5) Upon the death of a retired member receiving a service retirement benefit under this section, the  
24          survivor or contingent annuitant and the continuing benefit must be determined separately for each system as  
25          follows:

26           (a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must  
27          receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit  
28          as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon  
29          the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there  
30          are more than one, must receive the same monthly benefits that a surviving spouse would receive for as long



1 as the child or one of the children remains dependent, as defined in 19-9-104. The benefits must be made to  
2 the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no  
3 longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the  
4 remaining children until all the children are no longer dependent.

5 (b) For the sheriffs' retirement system portion of the benefit:

6 (i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the  
7 retired member elected an optional retirement benefit; or

8 (ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired  
9 member, including the excess, if any, of the retired member's accumulated contributions standing to the retired  
10 member's credit at the time of retirement less payments made to the retired member must be paid to the retired  
11 member's designated beneficiary."

12  
13 **Section 13.** Section 39-3-406, MCA, is amended to read:

14 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

15 (a) students participating in a distributive education program established under the auspices of an  
16 accredited educational agency;

17 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,  
18 mowing lawns, and cleaning sidewalks;

19 (c) persons employed directly by the head of a household to care for children dependent upon the head  
20 of the household;

21 (d) immediate members of the family of an employer or persons dependent upon an employer for half  
22 or more of their support in the customary sense of being a dependent;

23 (e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their  
24 services to a nonprofit organization on a fully or partially reimbursed basis;

25 (f) persons with disabilities engaged in work that is incidental to training or evaluation programs or  
26 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

27 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30  
28 days of their employment;

29 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may  
30 not exceed 180 days from their initial date of employment and further provided that during this exclusion period,

1 wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

2 (i) retired or semiretired persons performing part-time incidental work as a condition of their residence  
3 on a farm or ranch;

4 (j) an individual employed in a bona fide executive, administrative, or professional capacity, as these  
5 terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR  
6 541.5;

7 (k) an individual employed by the United States of America;

8 (l) resident managers employed in lodging establishments or assisted living facilities who, under the  
9 terms of their employment, live in the establishment or facility;

10 (m) a direct seller as defined in 26 U.S.C. 3508;

11 (n) a person placed as a participant in a public assistance program authorized by Title 53 into a work  
12 setting for the purpose of developing employment skills. The placement may be with either a public or private  
13 employer. The exclusion does not apply to an employment relationship formed in the work setting outside the  
14 scope of the employment skills activities authorized by Title 53.

15 (o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621,  
16 and providing care without wage compensation to no more than six foster children in the provider's own  
17 residence. The person may receive reimbursement for providing room and board, obtaining training, respite  
18 care, leisure and recreational activities, and providing for other needs and activities arising in the provision of  
19 in-home foster care.

20 (p) an employee employed in domestic service employment to provide companionship services, as  
21 defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for  
22 themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the  
23 person providing the service is employed directly by a family member or an individual who is a legal guardian.

24 (2) The provisions of 39-3-405 do not apply to:

25 (a) an employee with respect to whom the United States secretary of transportation has power to  
26 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

27 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part  
28 I of the Interstate Commerce Act;

29 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural  
30 state;

1 (d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily  
2 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements  
3 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily  
4 engaged in the business of selling the vehicles or implements to ultimate purchasers;

5 (e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed  
6 by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to  
7 ultimate purchasers;

8 (f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising  
9 for a radio or television station employer;

10 (g) an employee employed as a driver or driver's helper making local deliveries who is compensated  
11 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the  
12 plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum  
13 workweek applicable to them under 39-3-405;

14 (h) an employee employed in agriculture or in connection with the operation or maintenance of ditches,  
15 canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop  
16 basis, and that are used exclusively for supply and storing of water for agricultural purposes;

17 (i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee  
18 in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of  
19 livestock, either alone or in conjunction with other farmers, if the employee is:

20 (i) primarily employed during a workweek in agriculture by a farmer; and

21 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less than  
22 that prescribed by 39-3-404;

23 (j) an employee of an establishment commonly recognized as a country elevator, including an  
24 establishment that sells products and services used in the operation of a farm if no more than five employees  
25 are employed by the establishment;

26 (k) a driver employed by an employer engaged in the business of operating taxicabs;

27 (l) an employee who is employed with the employee's spouse by a nonprofit educational institution to  
28 serve as the parents of children who are orphans or one of whose natural parents is deceased or who are  
29 enrolled in the institution and reside in residential facilities of the institution so long as the children are in  
30 residence at the institution and so long as the employee and the employee's spouse reside in the facilities and

1 receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at  
2 an annual rate of not less than \$10,000;

3 (m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or  
4 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal  
5 if the number of employees employed by the employer in the forestry or lumbering operations does not exceed  
6 eight;

7 (n) an employee of a sheriff's ~~department~~ office who is working under an established work period in lieu  
8 of a workweek pursuant to 7-4-2509(1);

9 (o) an employee of a municipal or county government who is working under a work period not  
10 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective  
11 bargaining unit represents the employee or by mutual agreement of the employer and employee when a  
12 bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be  
13 compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

14 (p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled,  
15 aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period  
16 established through either a collective bargaining agreement when a collective bargaining unit represents the  
17 employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized.  
18 Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not  
19 less than 1 1/2 times the hourly wage rate for the employee.

20 (q) a firefighter who is working under a work period established in a collective bargaining agreement  
21 entered into between a public employer and a firefighters' organization or its exclusive representative;

22 (r) an officer or other employee of a police department in a city of the first or second class who is  
23 working under a work period established by the chief of police under 7-32-4118;

24 (s) an employee of a department of public safety working under a work period established pursuant to  
25 7-32-115;

26 (t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the  
27 minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and  
28 if more than half of the employee's compensation for a period of not less than 1 month is derived from  
29 commissions on goods and services;

30 (u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as

1 defined in 37-47-101;

2 (v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a  
3 second- or third-class city or a town;

4 (w) an employee of the consolidated legislative branch as provided in 5-2-503;

5 (x) an employee of the state or its political subdivisions employed, at the employee's option, on an  
6 occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the  
7 employee was employed in a capacity other than the employee's regular occupation may be excluded from the  
8 calculation of hours to determine overtime compensation."

9  
10 **Section 14.** Section 40-6-402, MCA, is amended to read:

11 **"40-6-402. Definitions.** As used in this part, the following definitions apply:

12 (1) "Child-placing agency" means an agency licensed under Title 52, chapter 8, part 1.

13 (2) "Court" means a court of record in a competent jurisdiction and, in Montana, means a district court  
14 or a tribal court.

15 (3) "Department" means the department of public health and human services provided for in 2-15-2201.

16 (4) "Emergency services provider" means:

17 (a) a uniformed or otherwise identifiable employee of a fire department, hospital, or law enforcement  
18 agency when the individual is on duty inside the premises of the fire department, hospital, or law enforcement  
19 agency; or

20 (b) any law enforcement officer, as defined in 7-32-201, who is in uniform or is otherwise identifiable.

21 (5) "Fire department" means a fire department organized by a city, town, or city-county consolidated  
22 local government under Title 7, chapter 33.

23 (6) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for  
24 whether an injury results.

25 (7) "Guardian ad litem" means a person appointed to represent a newborn under Title 41, chapter 3.

26 (8) "Hospital" has the meaning provided in 50-5-101.

27 (9) "Law enforcement agency" means a police department, or a sheriff's department office, a detention  
28 center as defined in 7-32-2241, or a correctional institution as defined in 45-2-101.

29 (10) "Newborn" means an infant who a physician reasonably believes to be no more than 30 days old.

30 (11) "Surrender" means to leave a newborn with an emergency services provider without expressing

1 an intent to return for the newborn."

2  
3 **Section 15.** Section 44-2-401, MCA, is amended to read:

4 **"44-2-401. Missing persons -- dental records.** (1) Any person who reports a missing person to a  
5 police department, or sheriff's department office, or other law enforcement authority must be given a form,  
6 supplied by the department of justice, that authorizes the release of the dental records of the missing person.  
7 The form must state that if the person is still missing 30 days after the report was made, the form ~~should~~ may  
8 be signed by a relative of the missing person and taken to the dentist of the missing person, who ~~must~~ shall  
9 release the dental records or copies ~~thereof~~ of the records to the relative. The records must be submitted by the  
10 relative within the next 10 days to the law enforcement authority to which the missing person report was made.

11 (2) If the missing person has not been found within 30 days after the report was made and no relative  
12 exists or can be located, the law enforcement authority may execute a signed written declaration stating that an  
13 investigation into the location of the missing person is being conducted and that the dental records may be  
14 necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of  
15 the declaration.

16 (3) If a person reported missing has not been found within 45 days after the report was made, the law  
17 enforcement authority conducting the investigation shall confer with the county coroner or state medical  
18 examiner and write a missing person report on a form supplied by the department of justice. The report and any  
19 dental records or copies ~~thereof~~ of the records obtained under this section must be submitted to the department  
20 of justice.

21 (4) The department of justice shall maintain an information file concerning each person reported to it  
22 as missing. The file must include information received under this section and any other information the  
23 department considers relevant to locating the missing person.

24 (5) The department files must be made available to any law enforcement agency attempting to locate  
25 missing persons.

26 (6) A law enforcement authority that finds a missing person or is notified that ~~he~~ a missing person has  
27 been found shall notify the department of justice, which shall return all dental records to the dentist and destroy  
28 the file prepared under subsection (4) concerning the person."

29  
30 **Section 16.** Section 44-5-506, MCA, is amended to read:

1       **"44-5-506. Participating agencies.** (1) Agencies eligible for participation in the section are:

2       (a) municipal police departments;

3       (b) sheriff's ~~departments~~ offices; and

4       (c) sections of the department of justice engaged in criminal investigation.

5       (2) A participant in the section must be an eligible agency that has been authorized by the attorney  
6 general to receive criminal intelligence information from the section under this part."

7  
8       **Section 17.** Section 45-8-108, MCA, is amended to read:

9       **"45-8-108. Definitions.** As used in 45-8-107 through 45-8-109, unless the context requires otherwise,  
10 the following definitions apply:

11       (1) "Civil disorder" means a public disturbance involving unlawful acts of violence by a group of two or  
12 more persons that causes an immediate danger of or results in injury to the property or person of any other  
13 individual.

14       (2) "Governmental military force" means:

15       (a) the national guard as defined in 10 U.S.C. 101;

16       (b) the organized militia of a state or territory of the United States, the Commonwealth of Puerto Rico,  
17 or the District of Columbia not included in the definition of the national guard; and

18       (c) the armed forces of the United States.

19       (3) "Law enforcement agency" means a department of public safety, a police department, a sheriff's  
20 ~~department~~ office, the highway patrol, or a governmental unit of one or more persons employed by the state or  
21 federal government or a political subdivision of the state or federal government, for the purpose of detecting and  
22 preventing crime and enforcing laws or ordinances, whose employees are authorized to make arrests for crimes  
23 while acting in the scope of their authority.

24       (4) "Peace officer" has the meaning given in 45-2-101."

25  
26       NEW SECTION. **Section 18. Name change -- directions to code commissioner.** Wherever a  
27 reference to a sheriff's department appears in legislation enacted by the 2005 legislature, the code commissioner  
28 is directed to change it to a reference to a sheriff's office.

29                               - END -